IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 4093 of 2005

Between:

1 A. Joji Reddy S/o Venkata Narsa Reddy
Vempalli Mandal, Kadapa District
2 N. Nageswaramma W/o Subbarayudu
Vemula Village Mandal, Kadapa District
3 M. Gangulamma W/o Suryanarayana Reddy
E. Kothapalli Village, Pulivendula Mandal, Kadapa District
4 Smt. B. Raja Bi W/o Mahaboob
Simhadripuram village, and Mandal, Kadapa District
5 B. Veera Bhaskaer Reddy S/o Ramachandra Reddy
Gurajala Village, Simhadripuram Mandal, Kadapa District
6 N. Pedda Ankulu S/o Ankulu
Kamballi Village, Simhadripuram Mandal Kadapa District
7 K. Bala Gangi Reddy S/o Pedda Konda Reddy
Inaguluru Village, Thondur Mandal, Kadapa District

..... PETITIONER(S)

AND

1 Government of Andhra Pradesh, rep by Chief Secretary, Secretariat, Hyderabad
2 Government of Andhra Pradesh, rep by Principal Secretary, Panchayat Raj and Rural
Development Department, Secrtariat, Hyderabad
3 The District Collector, Kadapa Kadapa District
4 The Officer on Special Duty Pulivendula Area Development Agency,
Pulivendula Kadapa District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ order or Direction, more particularly one in the nature of

Writ of Mandamus to declare the impugned proceedings bearing Rc. No. OSD 11/2004 dt 12-2-2005 issued by the 6th respondent in proposing to execute the developmental works in the Modal village of Pulivendula Assembly Constituency without inviting the tenders and without the involvement of the Gram Panchayat concerned as arbitrary, illegal unconstitutional and violative of Articles 14, 243(g) and Schedule II of the Constitution of India and consequently to direct the respondents herein to invite the tenders and involve the Gram Panchayats concerned in the execution of works, and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case

Counsel for the Petitioners:MR.J.JANAKIRAMI REDDY

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following :

ORDER:

Petitioners are the Sarpanches of 8 villages in Kadapa District. They filed this petition questioning RC.No. OSD 11/2005 dated 12.2.2005 of the 4th respondent on the ground that it violates the provisions of the Panchayat Raj Act and the Rules relating to execution of public works framed therein.

2. The admitted facts are Government of A.P. which prepared a Model Village scheme for 12 villages in Pulivendula Assembly Constituency extended the same to 54 villages. That scheme relates to laying of cement concrete roads and drains etc., for the purpose of improving the amenities in those villages by constituting a Committee named, Area Development Agency, headed by a Special Officer who has to undertake execution of the works proposed and by G.O. Ms. No.13, Planning (Plg.VII) Department, dated 16.8.2004, granted administrative sanction to develop those villages as Model villages and allotted Rs.3064.87 lakhs for execution of the proposed works without involving the concerned Gram Panchayats and without calling for tenders.

3. The contention of the learned counsel for the petitioners is that since there is no emergency to proceed with the works on a war footing without inviting tenders and

since Article 243(g) of the Constitution casts a responsibility on the Panchayats for economic development and implementation of schemes specified in Schedule II of the Constitution, by issuing the impugned G.O. Government gave a go bye to all the prescribed norms with its intention to favour some individuals. He placed strong reliance on HAJI T.M. HASSAN RAWTHER vs. KERALA FINANCIAL CORPORATION & OTHERS () & M/s. STERLING COMPUTERS LTD., & OTHERS (), in support of his contention that the procedure being adopted by the respondents to implement the scheme is improper.

4. The contention of the learned Advocate General is that Government with a view to make some villages Model Villages, proposed to undertake the works without involving contractors and middlemen and that petition is filed with political motives.

5. In Haji T.M. Hasan's case (1 supra), appellant before the Supreme Court, whose property was purchased by the Kerala Financial Corporation in a Court auction, wanted to repurchase the property from Kerala Financial Corporation when it intended to sell that property in public auction. Though he figured as the highest bidder, since could not deposit the amount for which the bid was knocked down in his favour, Kerala Financial Corporation sold the property under private negotiation for a price higher than that was bid by the appellant. Questioning the sale in favour of the third party, appellant filed a writ petition in Kerala High Court and the same was dismissed. While dismissing the appeal preferred to it by the appellant, Supreme Court observed that public property owned by State, or by any instrumentality of the State, should generally be sold by public auction or by inviting tenders to ensure fairness and transparency.

6. In Sterling Computers Limited case (2 supra) Supreme Court held that awarding contracts without inviting tenders by Public Sector undertaking is improper.

7. I am unable to understand as to how that decision can be of any help to the petitioners. Had the Government entrusted the works to be undertaken by it to contractors of its choice without the knowledge and involvement of the concerned Panchayats, the petitioners-Sarpanches may have a grievance. When the government intended to execute the work by itself through a Special Officer appointed by it, by engaging labour and without involvement of any contractors petitioners cannot have any grievance.

8. The next contention of the learned counsel for the petitioners is since G.O.

Ms. No. 95, Panchayat Raj & Rural Devpt., (Estt.III), dated 8.3.1999, Government authorised the Deputy Executive Engineers of Panchayat Raj Department to approve the tender notice and tender schedules for Gram Panchayat works costing Rs.2.00 lakhs at estimated rates, and since as per G.O. Ms. No.589, P.R. & R.D., Department, dated 29.9.1989 all works relating to construction of buildings, roads, bridges etc, except minor irrigation works, which are sanctioned on contribution of more than 35% of the estimated cost by Mandal Praja Parishad or Zilla Praja Parishad or by the Government shall have to be entrusted to the local Gram Panchayat, and since the proceedings impugned are issued in violation of the above G.O., the same is liable to be quashed. Relying on para-150 and 154 of the Public Works Department Code, relating to method of execution of works by contracts, where it is stated that the works by engaging daily labour can be undertaken only when no contractor is willing to undertake the work and that purchase of materials or tools and plant and machinery can be done only as per the Store Rules in Appendix 15 to the A.P. Financial and Accounts Code, and relying on G.O. Ms. No. 477, Panchayat Raj & Rural Development, (Progs.II) Department, dated 12.11.1998, he contended that the proceedings impugned are liable to be quashed.

9. In my considered opinion the procedural aspects referred to and relied on by the learned counsel for petitioners would apply to regular and normal works to be undertaken by the concerned local bodies. In this case Government specially allotted money for a specific purpose and while doing so it can decide how the money should be spent. In fact by implementation of the scheme the villages covered by it would be having more facilities than the other villages. So it can be said to be a boon to those villages. The Sarpanches of those villages cannot have a grievance for their not being able to execute the works and for the special officer appointed by Government undertaking the works by engaging daily labour without employing any contractor. Since the provider of a special fund for special purpose can always lay down the conditions and norms as per which those funds can be spent, petitioners cannot be said to be aggrieved by the proceedings impugned.

Therefore, I find no merits in the petition. Hence, the writ petition is dismissed. No costs.

C.Y. SOMAYAJULU, J

DATE: 12th July, 2005

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To

1 The Chief Secretary, Government of Andhra Pradesh, Secretariat, Hyderabad
2 The Principal Secretary,Government of Andhra Pradesh, Panchayat Raj and Rural Development Department, Secrtariat, Hyderabad
3 The District Collector, Kadapa, Kadapa District
4 The Officer on Special Duty, Pulivendula Area Development Agency, Pulivendula, Kadapa District.

5 Two C.Cs. to the Government Pleader for Panchayat Raj & Rural Development, High Court Buildings, Hyderabad.

6 Two C.D. copies